Supreme Court, U.S.
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IN THE

Supreme Court of the United States

CAVALIER MANUFACTURING, INC.
D/B/A BUCCANEER HOMES OF ALABAMA, INC.,

Petitioner,

v.

ANGELA JACKSON AND SHAWYN JACKSON,

Respondents,

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

PETITION FOR WRIT OF CERTIORARI

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53pp.

QUESTION PRESENTED

Whether the Supreme Court of Alabama erred and violated the rights of Petitioner Cavalier Manufacturing, Inc. under the Federal Arbitration Act when, after holding that an arbitration agreement substantially affected interstate commerce and was valid and enforceable under the Federal Arbitration Act, the Supreme Court of Alabama then held that a portion of the arbitration agreement which stated that the arbitrator would have no power to award punitive damages was void because it was contrary to the public policy of the State of Alabama?

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Pursuant to Rule 29.6 of the Supreme Court Rules and to enable the Justices to evaluate possible disqualification or recusal, Cavalier Manufacturing, Inc. certifies that its parent corporation, Cavalier Homes, Inc., has issued shares to the public and owns 10% or more of the stock of Cavalier Manufacturing, Inc.

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STATUTES

9 U.S.C. §2, ***et. seq.*** 8

CITATION OF OFFICIAL AND UNOFFICIAL REPORT OF OPINION OF THE SUPREME COURT OF ALABAMA

Cavalier Manufacturing, Inc. d/b/a Buccaneer Homes of Alabama, Inc. v. Angela Jackson and Shawyn Jackson, Case No. 1000391, __ So. 2d __ , 2001 WL 1177028 (Ala. Oct. 5, 2001).

(Appendix A).

STATEMENT OF BASIS FOR JURISDICTION

On October 5, 2001, having correctly held previously that the arbitration agreement at issue was enforceable under the Federal Arbitration Act, the Supreme Court of Alabama erroneously held that a provision in the arbitration agreement prohibiting the arbitrator from awarding punitive damages was void because it violated the public policy of the State of Alabama. Cavalier requests that this Court grant this Petition for Writ of Certiorari because that holding violates Cavalier's rights under the Federal Arbitration Act and is contrary to decisions of this Court and of United States Courts of Appeal.

Pursuant to 28 U.S.C. §1257, final judgments or decrees rendered by the highest court of a state in which a decision could be had may be reviewed by certiorari where any right and/or privilege is claimed under a statute of the United States. Rule 10(c) of the Supreme Court Rules provides for review on a writ of certiorari when a state court of last resort has decided an important federal question in a way that conflicts with recent decisions of this Court. Rule 10(b) of the Supreme Court Rules provides for review on a writ of certiorari when a state court of last resort has decided an important federal question in a way that conflicts with a decision of a United States Court of Appeals.

Cavalier submits that the Federal Arbitration Act requires that arbitration agreements are to be enforced according to the expressed intent of the parties. ***See Mastrobuono v. Shearson Lehman Hutton, Inc.***, 514 U.S. 52 (1995). In this case, the parties expressed their intent that the arbitrator would be prohibited from awarding punitive damages. Had the Supreme Court of Alabama ruled in conformity with the Federal Arbitration Act and this Court's holding in ***Mastrobuono***, it would have enforced the arbitration agreement as written. The Supreme Court of Alabama erred and violated Cavalier's right to arbitration under the Federal Arbitration Act when it held the provision prohibiting the award of punitive damages was unenforceable because it violated the public policy of the State of Alabama. The decision of the Supreme Court of Alabama conflicts with this Court's

decision in ***Mastrobuono***, and also conflicts with the opinion of the United States Court of Appeals for the First Circuit in ***Raytheon Co. v. Automated Business Systems, Inc.***, 882 F.2d 6, 12 (1st Cir. 1989), the opinion of the United States Court of Appeals for the Fourth Circuit in ***Glass v. Kidder Peabody & Co., Inc.***, 114 F.3d 446, 449 (4th Cir. 1997), the opinion of the United States Court of Appeals for the Seventh Circuit in ***Baravati v. Josephthal, Lyons & Ross, Inc.***, 28 F.3d 704, 709 (7th Cir. 1994), and the opinions of the United States Court of Appeals for the Eleventh Circuit in ***Davis v. Prudential Securities, Inc.*** 59 F.3d 1186, 1192 n.6 (11th Cir. 1995) and in ***Bonar v. Dean Witter Reynolds, Inc.***, 835 F.2d 1378, 1387 n. 16 (11th Cir. 1988). In the above cases, the courts held that under the Federal Arbitration Act parties to an arbitration agreement are free to contractually agree that an arbitrator may not award punitive damages.

STATUTES INVOLVED IN THIS CASE

"A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

9 U.S.C. §2.

STATEMENT OF THE CASE

On or about June 9, 2000, Plaintiffs/Respondents Angela Jackson and Shawyn Jackson filed a Complaint against Petitioner Cavalier Manufacturing, Inc., Buccaneer Homes of Alabama, Inc. (Buccaneer Homes of Alabama, Inc. is a division of Cavalier Manufacturing, Inc. and hereafter the two will be referred to jointly as "Cavalier"), and Home Liquidation Company d/b/a C & J Manufactured Homes, Inc. The allegations of the Complaint arose from the sale of a home manufactured by Cavalier to the Plaintiffs by C & J Manufactured Homes, Inc.

On July 19, 2000, Cavalier timely filed a Motion to Dismiss Or, in the Alternative, Motion to Enforce Binding Arbitration And Stay Proceedings asking the trial court to order the Plaintiffs to submit to binding arbitration and to stay the action pending binding arbitration. The motion was made pursuant to the Federal Arbitration Act, 9 U.S.C. § 2, and this Court's holding in ***Allied-Bruce Terminix Companies, Inc. v. Dobson,*** 513 U.S. 265 (1995), and states:

> COME NOW Defendants Cavalier Manufacturing, Inc. and Buccaneer Homes of Alabama, Inc. (a division of Cavalier Manufacturing, Inc.), and , pursuant to 9 U.S.C. § 2 and ***Allied-Bruce Terminix Companies, Inc. v. Dobson***, move that this Court order the Plaintiffs to submit to binding arbitration and stay the trial of this action until arbitration has been had subject to the rules of the American Arbitration Association.

(Appendix C). Also on July 19, 2000, Cavalier filed an Answer in which Buccaneer Homes affirmatively pled the Complaint was due to be dismissed or the action stayed pending binding arbitration.

The trial court denied the motion of Cavalier to dismiss the case or enforce binding arbitration on September 11, 2000. On October 5, 2000, Buccaneer Homes timely filed a Motion to Alter, Amend, Or Vacate Order Denying Motion to Dismiss Or,

in the Alternative, Motion to Enforce Binding Arbitration and Stay Proceedings and a Brief in Support of the Motion to Alter, Amend, Or Vacate. On October 11, 2000, the trial court denied the Motion to Alter, Amend, Or Vacate Order. On November 21, 2000, Cavalier timely filed a Notice of Appeal of the trial court's order of September 11, 2000 denying the Motion to Dismiss Or, In the Alternative, Motion to Enforce Binding Arbitration and Stay Proceedings and of the order of October 11, 2000 denying the motion to alter, amend, or vacate that order.

On April 13, 2001, the Supreme Court of Alabama entered an opinion in this case holding that the arbitration agreement was a contract substantially affecting interstate commerce and was enforceable under the Federal Arbitration Act. In that opinion, the Supreme Court of Alabama remanded the case "with instructions for the trial court to determine whether the arbitration clause is valid even though it prohibits the arbitrator from awarding punitive damages." (Appendix B, p. 8).

On or about May 22, 2001, the trial court entered an order containing no factual findings. In that order, the trial court found that the arbitration clause was not valid and enforceable because it prohibited the arbitrator from awarding punitive damages.

On October 5, 2001, the Supreme Court of Alabama issued a second opinion in this case holding that a provision of the arbitration agreement which prohibited the arbitrator from awarding punitive damages was not valid. Rather than apply federal law pursuant to the Federal Arbitration Act, the Supreme Court of Alabama applied the public policy of the State of Alabama and held the restriction on the arbitrator's ability to award punitive damages violated the public policy of the State of Alabama. The Supreme Court of Alabama held:

> Because the United States Supreme Court has not addressed this issue, and we can find no clear direction on this issue from federal law or federal policy, we conclude that Alabama law and public policy is not

preempted. Therefore, we must determine whether an arbitration clause that forbids the arbitrator from awarding punitive damages is valid in a state that disfavors predispute arbitration clauses.

* * * *

We hold that a predispute arbitration clause that forbids an arbitrator from awarding punitive damages is void as contrary to the public policy of this State - - to protect its citizens in certain legislatively prescribed actions from wrongful behavior and to punish the wrongdoer. If parties to an arbitration agreement waive an arbitrator's ability to award punitive damages, the door will open wide to rampant fraudulent conduct with few, if any, legal repercussions. The Legislature intended that punitive damages be available as a remedy in fraud actions, as evidenced by the enactment of § 6-11-20(a) . The Legislature is endowed with the exclusive domain to formulate public policy in Alabama, a domain upon which the judiciary shall not trod. American Bankers Ins. Co. of Florida, 757 So.2d at 1137. Thus, we conclude that it is not within the province of parties to a predispute arbitration agreement to waive a punitive-damages award.

(Appendix A, pp. 6-8).

STATEMENT OF THE FACTS

On or about April 28, 1998, Plaintiffs purchased a home manufactured by Cavalier from C & J Manufactured Homes. On the date of the sale, Plaintiffs signed an Acknowledgment and Agreement between Cavalier, C & J Manufactured Homes, and Plaintiffs. The Acknowledgment and Agreement provides that all disputes between the parties shall be resolved by binding arbitration. The Acknowledgment and Agreement states, in pertinent part:

> ACKNOWLEDGMENT AND AGREEMENT made as of the 28th day of April, 1998 by the undersigned purchaser(s) (the "PURCHASER") of that certain manufactured home, model 5354, serial number ALBUS3W12971294AB (the "Manufactured Home"), and Buccaneer Homes, a division of Cavalier Manufacturing, Inc. (the "MANUFACTURER") and C & J Manufactured Homes (the "RETAILER").
>
> * * * *
>
> 10. **ARBITRATION** All parties hereto acknowledge and agree that this Agreement and the performance of the transactions contemplated hereby evidence transactions which involve a substantial nexus with interstate commerce. Accordingly, any dispute, controversy or claim of any kind or nature which has arisen or may arise between the parties, their successors, assigns, heirs, representatives, parent companies, divisions, subsidiaries, affiliates, officers, directors, employees, agents, and contractors (including any dispute, controversy or claim relating to the validity of this arbitration clause), whether arising out of past, present or future dealings between the parties, their successors, assigns, heirs, representatives, parent companies, divisions, subsidiaries, affiliates, officers, directors, employees, agents and contractors shall be governed by the Federal Arbitration Act and shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American

> Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof . . . .Without limiting the generality of the foregoing, it is the intention of the parties to resolve by binding arbitration, provided herein, all past, present and future disputes, whether in tort, contract, or otherwise, concerning or related to (i) the manufactured home, its sale, warranty, set-up, repair, installation, manufacture, financing, insurance, its condition , (ii) the validity of this agreement, and (iii) any other dealings, business, or otherwise, between the parties, their successors, assigns, heirs, representatives, parent companies, divisions, subsidiaries, affiliates, officers, directors, employees, agents, and contractors. The parties understand and agree that the arbitrator shall have all powers provided by law, and may award any legal or equitable relief, including, without limitation, money damages, declaratory relief and injunctive relief; provided, however, that the arbitrator shall have no power to award punitive damages or other damages not measured by the prevailing party's actual damages.

(Clerk's Record 40). Plaintiffs specifically initialed just above the above paragraph indicating they read and understood the paragraph. (Clerk's Record 40).

The Acknowledgment and Agreement is signed by Plaintiffs Angela Jackson and Shawyn Jackson. The Acknowledgment and Agreement is also signed by a representative of Cavalier and a representative of C & J Manufactured Homes. (Clerk's Record 40).

Cavalier is a Delaware corporation which manufactures manufactured homes in Alabama. The home purchased by the Plaintiffs was manufactured with component parts that had been shipped to Alabama in interstate commerce. The home contained appliances that were supplied by Cavalier and that were shipped to Alabama in interstate commerce. (Clerk's Record 38).

ARGUMENT

Petitioner Cavalier Manufacturing, Inc. d/b/a Buccaneer Homes of Alabama, Inc. ("Cavalier") respectfully requests that this Court grant this Petition for Writ of Certiorari pursuant to 28 U.S.C. §1257 and Rule 10(b) and Rule 10(c) of the Rules of the Supreme Court of the United States. The opinion of the Supreme Court of Alabama decides an important federal question and conflicts with a recent decision of this Court and also conflicts with decisions of the United States Courts of Appeals for the First, Fourth, Seventh, and Eleventh Circuits, a decision from the United States District Court for the Middle District of Alabama, and a decision by the Court of Civil Appeals of Florida.

Cavalier moved to compel binding arbitration pursuant to the Federal Arbitration Act. The Supreme Court of Alabama held that the arbitration agreement was enforceable under the Federal Arbitration Act, but held that federal law and the Federal Arbitration Act do not preempt Alabama law and Alabama public policy on the issue of whether the arbitrator may by agreement be prohibited from awarding punitive damages. The Supreme Court of Alabama held that the provision in the arbitration agreement which restricted the arbitrator's ability to award punitive damages was unenforceable because it conflicted with the public policy of the State of Alabama.

The opinion of the Supreme Court of Alabama holding that the provision in the arbitration agreement that prohibits the award of punitive damages by the arbitrator is unenforceable directly conflicts with the decision of this Court in ***Mastrobuono v. Shearson Lehman Hutton, Inc.***, 514 U.S. 52 (1995). In that case, this Court held that the Federal Arbitration Act requires that private agreements to arbitrate be enforced according to their terms. This Court held that the arbitrability of a punitive damage claim is dependent upon "what the contract has to say." ***Id.*** at 58.

The holding by the Supreme Court of Alabama also conflicts with decisions from the United States Courts of Appeals for the

First Circuit, ***Raytheon Co. v. Automated Business Systems, Inc.***, 882 F.2d 6, 12 (1st Cir. 1989); the Fourth Circuit, ***Glass v. Kidder Peabody & Co., Inc.***, 114 F.3d 446, 449 (4th Cir. 1997); the Seventh Circuit, ***Baravati v. Josephthal, Lyon & Ross, Inc.***, 28 F.3d 704, 709 (7th Cir. 1994); the Eleventh Circuit, ***Davis v. Prudential Securities, Inc.*** 59 F.3d 1186, 1192 n.6 (11th Cir. 1995) and ***Bonar v. Dean Witter Reynolds, Inc.***, 835 F.2d 1378, 1387 n. 16 (11th Cir. 1988); the United States District Court for the Northern District of Alabama, ***Willoughby Roofing & Supply Co. v. Kajima Int'l, Inc.***, 598 F.Supp. 353, 365 (N.D. Ala. 1984); and the Florida Court of Appeals, ***PrimeCo Personal Communications v. Commonwealth Distributors, Inc.,*** 740 So.2d 585, 587 (Fla. Ct. App. 1999). Those courts held that arbitration agreements are to be enforced according to the expressed intention of the parties and that arbitration agreements which restrict the arbitrator's ability to award punitive damages are valid and enforceable.

The issue involved in this case involves an important issue of federal law: whether under the Federal Arbitration Act the parties to a predispute arbitration agreement that substantially affects interstate commerce may agree that the arbitrator may not award punitive damages. However, the Supreme Court of Alabama did not resolve the issue based on federal law, but held that a provision providing that the arbitrator may not award punitive damages is void based upon the public policy of the State of Alabama. The Supreme Court of Alabama held: "Because the United States Supreme Court has not addressed this issue, and we can find no clear direction on this issue from federal law or federal policy, we conclude that Alabama law and public policy is not preempted." (Appendix A, p. 6).

The Supreme Court of Alabama held correctly that the arbitration agreement at issue in this case evidenced a transaction involving a substantial nexus with interstate commerce and was enforceable under the Federal Arbitration Act. Therefore, when deciding whether the restriction on the arbitrator's ability to award punitive damages was enforceable, the Supreme Court of

Alabama erred when it restricted its analysis to the public policy of the State of Alabama instead of determining whether the agreement was enforceable under the Federal Arbitration Act.

The purpose of the Federal Arbitration Act is "to ensure judicial enforcement of privately made agreements to arbitrate." ***Dean Witter Reynolds Inc. v. Byrd***, 470 U.S. 213 (1985).

The Federal Arbitration Act, 9. U.S.C. § 2, ***et seq.*** (hereinafter "FAA"), provides that a "written provision in . . . a contract evidencing a transaction involving [interstate] commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or . . . an agreement in writing to submit to arbitration an existing controversy arising out of such a contract . . . shall be valid, irrevocable, and enforceable. . . ." 9 U.S.C. § 2. This Court has ruled in a case arising in Alabama that an agreement which contains a provision requiring arbitration of the disputes between parties which involves or affects interstate commerce is specifically enforceable under the FAA. ***Allied-Bruce Terminix Cos. v. Dobson***, 513 U.S. 265 (1995).

In the ***Terminix*** decision, this Court categorically rejected the standard previously adopted by the Alabama Supreme Court requiring proof that the parties contemplated substantial interstate commerce to determine whether the FAA applies. Instead, the test set forth by this Court is whether the transaction ***involved or affected*** interstate commerce, regardless of whether the parties contemplated such interstate involvement.

Cavalier introduced evidence to satisfy the threshold question under ***Terminix***. The Supreme Court of Alabama specifically held that Cavalier had proven a substantial nexus with interstate commerce and that the agreement was enforceable under the FAA. However, the Supreme Court of Alabama erroneously held that the provision in the arbitration agreement restricting the arbitrator's ability to award punitive damages is not enforceable under Alabama law.

The ruling of the Supreme Court of Alabama is in error and in conflict with the decision of this Court in ***Mastrobuono v. Shearson Lehman Hutton, Inc.***, 514 U.S. 52 (1995). In

Mastrobuono, this Court held that courts are bound to interpret a contract, including arbitration provisions, "in accordance with the expressed intentions of the parties." Therefore, if the parties agree that punitive damages may not be awarded in arbitration, that provision must be enforced by the court.

The issue in ***Mastrobuono*** also involved the issue of punitive damages but in a slightly different context than in the present case. Under New York state law, an arbitrator could not award punitive damages; however, the arbitration agreement stated that the arbitration agreement would be governed by the Rules of the National Association of Security Dealers, which allowed punitive damages to be awarded. This Court held that based upon the terms of the agreement the arbitrator could award punitive damages because the central purpose of the Federal Arbitration Act is to ensure "that private agreements to arbitrate are enforced according to the terms." ***Id.*** at 53-54. This Court did ***not*** hold that the parties could not agree that punitive damages would not be awarded in arbitration, instead this Court held: "Thus, the case before use comes down to what the contract has to say about the arbitrability of petitioner's claim for punitive damages." ***Id.*** at 58.

In this case, the issue also should come down to what the contract has to say about the arbitrability of Plaintiffs' claim for punitive damages. The agreement expressly states: "that the arbitrator will have no power to award punitive damages or other damages not measured by the prevailing party's actual damages." Pursuant to the decision of this Court in ***Mastrobuono***, that provision does not render the arbitration agreement void. Rather, the provision must be enforced pursuant to the express intention of the parties. The opinion of the Supreme Court of Alabama ruling that the arbitration clause is not valid or enforceable because it prohibits the arbitrator from awarding punitive damages is in error and due to be reversed.

The opinion of the Supreme Court of Alabama is also in direct conflict with holdings of the United States Courts of Appeals for the First Circuit, the Fourth Circuit, the Seventh

Circuit, the Eleventh Circuit, and in direct conflict with the holdings of the United States District Court for the Northern District of Alabama and the Florida Court of Appeals. ***See Raytheon Co. v. Automated Business Systems, Inc.***, 882 F.2d 6, 12 (1st Cir. 1989) ("Parties that do wish arbitration provisions to exclude punitive damages claims are free to draft agreements that do so explicitly."); ***Glass v. Kidder Peabody & Co., Inc.***, 114 F.3d 446, 449 (4th Cir. 1997) (citing ***Mastrobuono*** for the holding "if the contract says 'no punitive damages' that is the end of the matter, for courts are bound to interpret contracts in accordance with the express intentions of the parties, . . ."); ***Baravati v. Josephthal, Lyon & Ross, Inc.***, 28 F.3d 704, 709 (7th Cir. 1994) (holding that parties may stipulate to whatever procedures they want "and surely can stipulate that punitive damages will not be awarded."); ***Davis v. Prudential Securities, Inc.*** 59 F.3d 1186, 1192 n.6 (11th Cir. 1995); ***Bonar v. Dean Witter Reynolds, Inc.***, 835 F.2d 1378, 1387 n. 16 (11th Cir. 1988); ***Willoughby Roofing & Supply Co. v. Kajima Int'l, Inc.***, 598 F.Supp. 353, 365 (N.D. Ala. 1984); ***PrimeCo Personal Communications v Commonwealth Distributors, Inc.***, 740 So.2d 585, 587 (Fla.Ct.App. 1999).

In ***Glass v. Kidder Peabody & Co., Inc.***, 114 F.3d 446 (4th Cir. 1997), one of the issues before the United States Court of Appeals for the Fourth Court was whether the parties' agreement that the issue of punitive damages could be decided by the arbitrator was enforceable. The Fourth Circuit Court held such an agreement was enforceable explaining:

> The issue of punitive damages in an arbitration case is governed by ***Mastrobuono v. Shearson Lehman Hutton, Inc.***, 514 U.S. 52, 115 S.Ct. 1212, 131 L.Ed.2d 76 (1995). Here the Supreme Court declared: 'If the contract says 'no punitive damages,' that is the end of the matter, for courts are bound to interpret contracts in accordance with the expressed intentions of the parties - - even if the effect of those intentions is to limit arbitration . . . . On the other hand, we think our decisions in ***Allied-Bruce***

> *[Terminix Cos. v. Dobson*, 513 U.S. 265, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995)], ***Southland***, and ***Perry***, make clear that if contracting parties agree to ***include*** claims for punitive damages within the issues to be arbitrated, the FAA ensures that their agreement will be enforced according to its terms even if a rule of state law should otherwise exclude such claims from arbitration.' ***Id.*** at 56-58, 115 S.Ct. at 1216.

Id. at 448. (emphasis supplied by Court).

In ***Baravati v. Josephthal, Lyon & Ross, Inc.***, 28 F.3d 704 (7th Cir. 1994), one of the issues before the United States Court of Appeals for the Seventh Circuit was whether the arbitrators had exceeded their powers in awarding punitive damages. In discussing the power of an arbitrator to award punitive damages, the Seventh Circuit explained that parties can agree between them as to the procedures that will govern arbitration proceedings between them and can stipulate that punitive damages will not be awarded. The Seventh Circuit held:

> The rules of the American Arbitration Association, which were applicable in those cases, authorize arbitrators to award 'any remedy which [is] just and equitable and within the scope of the agreement,' and this was deemed authorization enough for the awarding of punitive damages. These courts, however, would enforce a provision in an arbitration clause that ***forbade*** the arbitrator to award punitive damages; and if, as we thought was the situation in Mastrobuono, the parties do the same thing by invoking a body of law that contains such a prohibition, there would be no greater reason to refuse to honor their choice. Indeed, short of authorizing trial by battle or ordeal or, more doubtfully, by a panel of three monkeys, parties can stipulate to whatever procedures they want to govern the arbitration of their disputes; parties are as free to specify idiosyncratic terms of arbitration as they are to specify any other terms in their contract. Cf. Rashid v. Schenck Construction Co., 190 W. Va. 363, 438 S.E.2d 543, 547 (1993); Perini Corp. v. Greate Bay

> Hotel & Casino, Inc., 129 N.J. 479, 610 A.2d 364, 369 (1992), overruled on other grounds in Tretina Printing, Inc. v. Fitzpatrick & Associates, Inc. 135 N.J. 349, 640 A.2d 788 (1994); Astoria Medical Group v. Health Ins. Plan, 11 N.Y.2d 128, 227 N.Y.S.2d 401, 403, 182 N.E.2d 85, 87 (1962). For that matter, parties to adjudication have considerable power to vary the normal procedures, DDI Seamless Cylinder Int'l, Inc. v. General Fire Extinguisher Corp. 14 F.3d 1163 (7th Cir. 1994), and surely can stipulate that punitive damages will not be awarded.

Id. at 709. (emphasis supplied by Court).

Cases from the United States Court of Appeals for the Eleventh Circuit agree that parties to an arbitration agreement may agree that the arbitrator may not award punitive damages. ***Davis v. Prudential Securities, Inc.***, 59 F. 3d 1186, 1192 n. 6 (11th Cir. 1995) ("Presumably, therefore, even after the Supreme Court's decision in ***Mastrobuono***, parties wishing to avoid the imposition of punitive damages in arbitration may simply expressly exclude punitive damages in the arbitration agreement."). ***Bonar v. Dean Witter Reynolds, Inc.***, 835 F. 2d 1378 (11th Cir. 1988) (holding that "a clear provision in a contract prohibiting arbitrators from awarding punitive damages" would be enforceable. *Id.* at 1387 n. 16). ***See also Willoughby Roofing & Supply Co. v. Kajima Int'l, Inc.***, 598 F. Supp. 353, 365 (N. D. Ala. 1984) ("If parties to an arbitration agreement desire to exclude the issue of punitive damages from the consideration of an arbitrator and reserve it for judicial hearing, they are free to specify that in their contract."), aff'd, 776 F.2d 269 (11th Cir. 1985).

In ***Raytheon Co. v. Automated Business Systems, Inc.***, 882 F.2d 6 (1st Cir. 1989), the United States Court of Appeals for the First Circuit held: "Parties that do wish arbitration provisions to exclude punitive damages claims are free to draft agreements that do so explicitly." *Id.* at 12.

In ***PrimeCo Personal Communications v. Commonwealth Distributors, Inc.***, 740 So.2d 585 (Fla. Ct. App. 1999), the

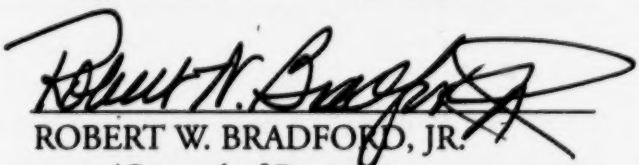
Florida Court of Appeals held that an arbitration agreement could preclude the award of punitive damages. That court explained:

> The contract between PrimeCo and CDI is clear and unambiguous to the extent that it provides for arbitration of '***any*** claim, controversy or dispute between the parties.' [Citations omitted]. Additionally, the contract provides that the arbitrator's authority to award damages is limited to compensatory damages. It is, therefore, abundantly clear that the parties have contractually agreed that neither party will be able to recover punitive damages from the other in connection with any claim or controversy that must be submitted to arbitration pursuant to the contract. ***See Complete Interiors, Inc. v. Behan***, 558 So.2d 48, 50-51 (Fla. 5th DCA 1990); ***Beaver Coaches***, 543 So.2d at 361. Accordingly, we reverse, and remand with directions that all the claims be submitted to arbitration.

Id. at 586-587. (emphasis supplied by Court).

CONCLUSION

For all of the above reasons, Cavalier submits that the Supreme Court of Alabama erred when it held that the public policy of the State of Alabama was not preempted by federal law and the Federal Arbitration Act and held that the agreement between the parties that the arbitrator shall have no authority to award punitive damages was not enforceable. It is crucial to interstate commerce that arbitration agreements be interpreted and enforced consistently under the Federal Arbitration Act. Cavalier respectfully moves that this Court grant this Petition for Writ of Certiorari to the Supreme Court of Alabama to resolve the conflict between the Supreme Court of Alabama and this Court, the United States Courts of Appeals for the First Circuit, the Fourth Circuit, the Seventh Circuit, the Eleventh Circuit, the United States District Court for the Northern District of Alabama, and the Florida Court of Appeals on the issue of whether the Federal Arbitration Act permits the parties to an arbitration agreement to agree that the arbitrator may not award punitive damages.



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APPENDIX